

SUPREME JUDICIAL COURT

Boston, Massachusetts 02108

NOTICE OF APPROVAL

Notice is hereby given that the Supreme Judicial Court has approved and promulgated rules as further indicated below.

MARGARET MARSHALL

Chief Justice

1. Court Submitting Rules for Approval:

Probate and Family Court Department

2. Date Rules Submitted for Approval:

August 25, 2009

3. Date Approved and Promulgated by the Supreme Judicial Court:

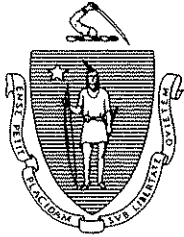
November 30, 2009

4. Rules or Rules, or Amendments Thereto, Approved and Promulgated:

Amendment to Mass. R. Dom. Rel. P. 17(b) as attached.

Effective date - December 1, 2009

(The original of this notice is to be filed in the office of the Clerk of the Supreme Judicial Court for the Commonwealth, and a copy to be sent by the Clerk to the court which requested approval of the rules.)



THE COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT
PROBATE AND FAMILY COURT DEPARTMENT
ADMINISTRATIVE OFFICE
TWO CENTER PLAZA, SUITE 210
BOSTON, MA 02108

PAULA M. CAREY
CHIEF JUSTICE

TEL: (617) 788-6600
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BY HAND

Justice Roderick L. Ireland
Supreme Judicial Court
John Adams Courthouse, Suite 2500
One Pemberton Square
Boston, MA 02108-1750

August 25, 2009

Re: Massachusetts Uniform Probate Code Corrective Amendment Request

Dear Chief Justice Ireland:

On June 24, 2009, the Supreme Judicial Court approved a number of proposed rules changes submitted by this office as a result of the recently enacted Massachusetts Uniform Probate Code. Unfortunately, in the version which was submitted to the Supreme Judicial Court, there was an inadvertent revision to Mass. R. Dom. Rel. P. 17 (b) in the first sentence where the word "may" was replaced with the word "shall." The use of the word "may" instead of "shall" is the sole distinction between Mass. R. Dom. Rel. P. 17 (b) and Mass. R. Civ. Pro. 17 (b). This inadvertent change was not highlighted as a red-line change to the Rule as it was never intended to be part of the requested revisions. For this reason, I am requesting that public comment be waived and a corrective amendment issue to change Mass. R. Dom. Rel. P. 17(b) as follows:

[nonapplicable material redacted]

From the current version listed below

Rule 17

(b) Infant or Incompetent Persons or Incapacitated Persons. Whenever an infant or incompetent person, or an incapacitated person as defined in G.L. c.190B has a representative, such as a general guardian, conservator, or other like fiduciary, the representative may sue or defend on behalf of the infant or incompetent person, or an incapacitated person as defined in G.L. c.190B. If an infant or incompetent person, or an incapacitated person as defined in G.L. c.190B does not have a duly appointed representative, he may sue by his next friend or by a guardian ad litem. The court shall appoint a guardian ad litem for an infant or incompetent person, or an incapacitated person as defined in G.L.c.190B not otherwise represented in an action or may make such other order as it deems proper for the protection of the infant or incompetent person, or an incapacitated person as defined in G.L. c.190B.

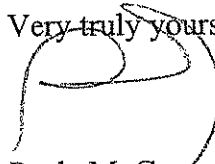
To the requested amended version listed below:

Rule 17

(b) Infant or Incompetent Persons or Incapacitated Persons. Whenever an infant or incompetent person, or an incapacitated person as defined in G.L. c.190B has a representative, such as a general guardian, conservator, or other like fiduciary, the representative may sue or defend on behalf of the infant or incompetent person, or an incapacitated person as defined in G.L. c.190B. If an infant or incompetent person, or an incapacitated person as defined in G.L. c.190B does not have a duly appointed representative, he may sue by his next friend or by a guardian ad litem. The court may appoint a guardian ad litem for an infant or incompetent person, or an incapacitated person as defined in G.L.c.190B not otherwise represented in an action or may make such other order as it deems proper for the protection of the infant or incompetent person, or an incapacitated person as defined in G.L. c.190B.

I apologize for any inconvenience this request causes. Thank you in advance for your time and effort. As always, I appreciate your help. Please feel free to contact me if you wish to discuss this with me further.

Very truly yours,

A handwritten signature in dark ink, appearing to be "P. Carey", enclosed within a circular flourish.

Paula M. Carey
Chief Justice Probate & Family Court

cc: Chief Justice for Administration and Management Robert A. Mulligan
Christine Burak, Esquire